IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2006

Coram :

THE HONOURABLE MR.JUSTICE R.BALASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Reference) No.328 of 2000

M.P.P.Nataraja Nadar
By Accountable Person
N.Deivendran, Virudunagar. ...Applicant

Vs

The Controller of Estate Duty,
Madras. ...Respondent

Reference under Section 64(1) of the Estate Duty Act, 1953 by Income Tax Appellate Tribunal, Madras, 'D' Bench in R.A. No.740(Mds)/1991 in EDA No.30(Mds)/1990.(EDA.No.20/89,90/MDU dated 21.3.1990 on the file of the Appellate Controller of Estate Duty (Appeals) IV, Chennai against N.571/VNR dated 27.10.1989 on the file of the Assistant Controller of Estate Duty, Madurai).

For Applicant : Mr.V.S.Jayakumar

For Respondent : Mr.T.Ravikumar

JUDGMENT

P.P.S.JANARTHANA RAJA, J.

Income Tax Appellate Tribunal, Madras, 'D' Bench, under the direction of this Court order in TCP No.207 of 1993 dated 01.03.1999, referred the matter under Section 64(1) of the Estate Duty Act at the instance of the assessee, for opinion of this Court, raising the following question of law:

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the sum of Rs.87,219/- being alleged share of the

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deceased in the goodwill of the firm of M.P.Ponnappa Nadar and Sons passed on the death of the deceased?"

2. The facts leading to the above question of law are as under:

One M.P.P.Nataraja Nadar passed away on 16.05.1981. During his life time, he was a partner in a firm called M/s.N.P.Ponnappa Nadar and Sons. The said firm was constituted on 18th June 1962 consisting of 4 Partners, including the deceased. The deceased had 25% share in the profit or loss of the firm. The firm was engaged in purchase and sale of textile and handloom goods on wholesale and retail basis at Virudhunagar. The deceased was a partner in the said firm in his capacity as the Karta of the HUF considering of himself and his six sons. The deceased has retired from the said firm on 16.04.1981. On 27.01.1982, the accountable person filed the estate duty return relating to the estate of the said deceased, disclosing the principal value of the estate at Rs.3,68,339/-. The Assessing Officer found that the value of the share of the said deceased in the goodwill of the firm was not returned by the accountable person and hence the Assessing Officer computed the goodwill of the firm at Rs.3,48,815/-and brought to charge 1/4th share of the said amount and included Rs.87,219/- as value of the goodwill and treated the said sum as property passing on the death of the deceased under Section 9 of the Estate Duty Act.

3. Aggrieved by the order, the accountable person filed an appeal to the Appellate Commissioner of Estate Duty. The said Appellate Commissioner of Estate Duty dismissed the appeal and confirmed the order of the assessment. Aggrieved, the accountable person filed an appeal to the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal dismissed the appeal and held that the lower authorities were justified in bringing to charge the share of the deceased in the goodwill of the firm.

4. The learned counsel appearing for the assessee submitted that the share of the said deceased in the goodwill of the firm was not exigible to the estate duty and on the date of the death of the deceased, he was not a party to the Partnership Deed dated 20.05.1981 and hence Section 9 is not applicable. He also relied on this Court judgment in the case of C.E.D. Vs. S.Kuppuswami reported in 131 ITR 709. The learned counsel appearing for the Revenue submitted that in respect of the goodwill, the deceased surrendered the share and hence the lower authorities were justified in bringing the above share of the said deceased in the goodwill of the firm.

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5. We heard both the sides. In the present case, the authorities below included the share of the deceased in the goodwill of the firm under Section 9 of the Estate Duty Act. Section 9 of the Estate Duty Act reads as follows:

> (1) Property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been bona fide made two years or more before the death of the deceased shall be deemed to pass on the death.
> "Sub-s.(2) provides for exemption from the operation of this provision in cases of (a) gifts made in consideration of marriage, subject to a maximum of rupees ten thousand in value, and (b) gifts which represent the normal expenditure of the deceased, subject to a maximum of rupees ten thousand."

From a reading of the above, it is clear that the words in the above section "property taken under a disposition made by the deceased" contemplates the transaction of which the deceased was the author or to which the deceased was a party. He must have made the disposition. In the present case, the deceased was a partner in the firm of M/s.N.P.Ponnappa Nadar and Sons. The said partnership was constituted on 16.06.1962. Later the deceased retired from the firm on 16.04.1981, but no deed of retirement was drawn up. On 20.05.1981, the six sons of the deceased became partners and they shared equally 1/4th share, which earlier belonged to their father. The deceased was not a party to the later deed. Hence there was no disposition made by the deceased in favour of his legal heirs to bring the case within the parameters of Section 9. When there is no disposition made by the deceased, the authorities below were wrong in bringing the share value of the goodwill under Section 9 of the Act. This Court judgment in the case of C.E.D. Vs. S.Kuppuswami reported in 131 ITR 709, considered the scope of Section 9 of the Estate Duty Act. In that case, One Mr.K.Subramania Iyer was a partner in the firm of T.Purushotham & Co., with 22% share. He retired on 08.11.1969 and from the next day, the firm was reconstituted taking two major sons of the said K.Subramania Iyer as partners and also admitting the minor son to the benefit of partnership, each one of them having 7 1/3% share in the firm.

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On the death of the said K.Subraania Iyer on 17.11.1969, the net asset of the firm was valued and 22% was included in the asset of the deceased under Section 9 of the Estate Duty Act for the purpose of levy of estate duty, on the ground that there was a transfer by the deceased of his interest in the firm in favour of his sons and hence, it was taxable under Section 9 of the Act. The said inclusion was confirmed by the Appellate Controller. On appeal, the Tribunal also held that the Section 9 was not applicable. On further reference to this Court, the Court also taken a view that no disposition on the part of the deceased and hence Section 9 was not applicable. While considering the scope of Section 9, the Court had taken a view that the deceased must make the disposition and held as follows:

> "This is not a case which comes within the scope of sub-s.(2) of s.9. The opening words of s.9, "property taken under a disposition made by the deceased" contemplate a transaction of which the deceased was the author or to which the deceased was a party. He must have made the disposition. In the present case, the document dated November 9, 1969 came to be executed by the partners who constituted the firm from that date. The deceased was not a party to this partnership deed. Therefore, this document by itself cannot be taken to be a transaction or a disposition made by the deceased. The learned counsel for the revenue, however placed strong reliance on the recital in which it is stated that the deceased, due to old age and ailment, expressed his intention to retire from the partnership in favour of his sons, to which the other parties agreed. As the recital is part of a document to which the deceased was not a party, the learned counsel for the accountable person submitted that the deceased cannot be held responsible for the recital, and that if persons made such a recital for their own purposes, that would not have any consequence as far as the deceased was concerned. Unfortunately, no fact has been brought on record to show that there was an agreement as such between the deceased and the other partners who

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> constituted the firm up to November 8, 1969. As a father, the deceased may have requested his erstwhile partners to take his sons into the firm. The other partners may not have objected to it. But the point is whether there was any enforceable agreement between the deceased and the other partners. He was ill and aged and died soon after retirement. If the other partners, after agreeing to his retirement and after allowing him to retire, did not take the sons into the firm, there would have been no scope for specifically enforcing any such agreement for which there was no consideration. Partnership is a contract between parties, and the parties who entered into the transaction on November 9, 1969, were free to do what they liked, in accordance with their own wishes. Therefore, the recital by itself cannot support the contention that the transaction was in a way a tripartite transaction to which the deceased, his sons and the other partners in the firm up to November 8, 1969, were all parties. It may be that the recital was introduced to ward off any idea of a gift by the surviving partners of the 22% share in favour of those that joined. There is, thus, no disposition or transfer or any interest held by the deceased as his interest was gone on the 8th November."

In the present case, there is no finding by the authorities below that there was disposition made by the deceased. Also there is no finding that at the time of retirement of the deceased, the said deceased had made a gift of the share of the goodwill to the continuing partner of the firm. Unless and until the factual finding is given that there was disposition made by the deceased in favour of his sons, the Revenue cannot invoke Section 9. We also found that there is no reference in the order of the Tribunal or in the statement of the case that the amount of value of the goodwill of Rs.87,219/-, is includable in the estate of the said deceased by reason of any other provision of the Estate Duty Act.

7. Following the principles enunciated in the judgment cited supra, we are of the view that the Tribunal was not correct in treating the value of the goodwill, as property passing on the

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death of the deceased under Section 9 of the Estate Duty Act. Hence, we answer the question in favour of the accountable person and against the Revenue. No costs.

km

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Registrar, Income Tax Appellate Tribunal,
Rajaji Bhavan, III Floor, Besant Nagar, Chennai-600090.[5 copies]

2.The Secretary, Board of Direct Taxes, New Delhi. [3 copies]

3.The Controller of Estate Duty,Chennai.

4.The Appellate Controller of Estate Duty, Chennai.

5.The Assistant Controller of Estate Duty, Madurai.

+ one cc to Mr.V.S.Jayakumar, Advocate Sr.No.13819.

JRG (CO)
RSM/3.4.2006

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